

COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
AGENCY NO. 07-110
ADMINISTRATIVE ACTION NO. 07-EBEC-0453



EXECUTIVE BRANCH ETHICS COMMISSION

COMPLAINANT

vs.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER**

RANDALL D. SMITH

RESPONDENT

* * * * *

By Initiating Order dated October 19, 2007, the Executive Branch Ethics Commission charged the Respondent, Randall D. Smith, with violating KRS 11A.020(1)(a), (c), and (d) for using or attempting to use his official position to give himself an advantage by soliciting monies from the owner of a mine it was his duty to inspect during the course of his official duties. The Commission alleged that Mr. Smith unlawfully extorted \$500 cash plus future monthly payments of \$500 from a surface-mine owner whose operations Mr. Smith inspected as an environmental inspector for the Environmental and Public Protection Cabinet, which exercised regulatory control over the surface-mine operation.

Counsel for the Respondent filed a Notice on November 16, 2007, admitting that Mr. Smith pleaded guilty in *Commonwealth of Kentucky v. Smith*, Lawrence Circuit Court Criminal Action No. 06-CR-00040, to a charge of Theft by Extortion over \$300, a Class D felony. In the Notice, Respondent's counsel asks the Commission "to accept Mr. Smith's admission" and states that Mr. Smith "does not wish to contest the charge or have a hearing."

On December 4, 2007, the Commission filed a Motion for Recommended Order pursuant to KRS 13B.090(2) requesting that Mr. Smith be found to have violated the Executive Branch

Code of Ethics at KRS 11A.020(1)(a), (c), and (d), and that for this violation Mr. Smith receive a public reprimand as provided under KRS 11A.100(3)(c) and be required to pay a civil penalty of \$500 as provided under KRS 11A.100(3)(e).

On December 10, 2007, Mr. Smith filed a Response to Motion for Recommended Order objecting to any sanction or penalty that required him to pay a civil penalty of \$500 on the grounds that he had already been found guilty of the same offense and was ordered to make any and all restitution, and that as such, the Commission is "civilly/criminally estopped from double sanctioning, which amounts to double jeopardy."

The Hearing Officer by Prehearing Conference Order dated November 13, 2007, set a prehearing conference for December 17, 2007, at 9:00 a.m., ET. The Respondent's counsel was not available for the prehearing conference when his office phone number was called at the scheduled time.

The Commission's motion for a Recommended Order should be granted because there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law. The Respondent provided no legal support for his objections that are stated in his Response to Motion for Recommended Order. The Respondent admitted to a criminal theft charge which satisfies the charge in the Commission's Initiating Order. Additionally, the Respondent stated in his Notice that he did not wish to contest the charges or have a hearing, which constitutes a withdrawal of Respondent's request for a hearing. The sanctions requested by the Commission are authorized by statute and appropriately tailored to the Respondent's violation. And finally, the Commission is not estopped by double jeopardy from imposing these sanctions because the

ethics violation requires proof of elements not contained in the criminal charge to which the Respondent pleaded guilty.

Accordingly, for all the foregoing reasons, the Hearing Officer RECOMMENDS that the Executive Branch Ethics Commission enter a Final Order that FINDS Respondent, Randall D. Smith, violated KRS 11A.020(1)(a), (c), and (d) for using or attempting to use his official position to give himself an advantage by soliciting monies from the owner of a mine Respondent's official duties required him to inspect. The Hearing Officer FURTHER RECOMMENDS that the Commission ORDER a public reprimand of Mr. Smith and ORDER him to pay a civil penalty of \$500 within 30 days of the issuance of the Final Order.

NOTICE TO PARTIES OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4):

a copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

Pursuant to KRS 13B.120(2):

the agency head may accept this recommended order and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

Pursuant to KRS 13B.120(4):

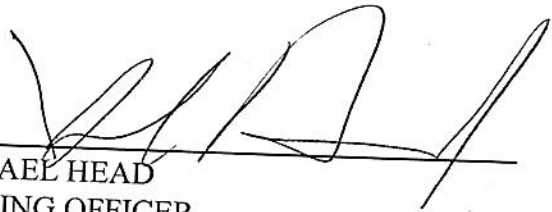
the agency head shall render a final order in an administrative hearing within ninety (90) days after the hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

Pursuant to KRS 13B.140:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served when filing an appeal petition in the Circuit Court.

SO RECOMMENDED this 17 day of December, 2007.



MICHAEL HEAD
HEARING OFFICER
DIV. OF ADMINISTRATIVE HEARINGS
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(502) 696-5442
(502) 573-1009 - FAX

CERTIFICATE OF SERVICE

18th I hereby certify that the original of this RECOMMENDED ORDER was mailed this day of December, 2007, by messenger mail, to:

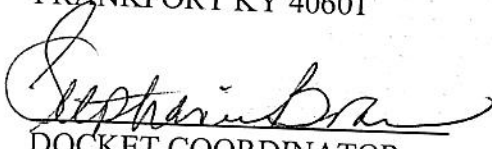
DAPHNE CRISCILLIS
EXECUTIVE ASSISTANT
EXECUTIVE BRANCH ETHICS COMM
THE VEST-LINDSEY HOUSE
401 WAPPING ST
FRANKFORT KY 40601

for filing; and a true copy was mailed, postage prepaid, to:

MICHAEL CURTIS
ATTORNEY AT LAW
PO BOX 1455
1701 CENTRAL AVE STE 300
ASHLAND KY 41105

and, by messenger mail, to:

JOHN R STEFFEN
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DOCKET COORDINATOR

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